

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 21, 2010

- I. **ATTENDANCE** – Chairman Brown called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on May 21, 2010.

Members in attendance were Chairman Peter Brown, Louis Stout, James Griggs, Barry Stumbo, Katherine Moore, Jan Meyer, and Noel White (arrived at 1:03 p.m.). Others present were Jim Hume, George Dillon and Mark Newberg, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Capt. Charles Bowen, Division of Fire & Emergency Services, and Rochelle Boland, Department of Law. Staff members in attendance were Bill Saltee, Jim Marx and Wanda Howard.

Swearing of Witnesses – At this time, the Chair asked everyone that intended to speak at today's meeting to stand and be sworn. Many members of the audience did so, and Chairman Brown administered the oath.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the April 24, 2009 meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout and carried unanimously (White absent) to approve the minutes of the April 24, 2009 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. Postponement or Withdrawal of any Scheduled Business Item - The Chair announced that any person having an appeal or other business before the Board could request postponement or withdrawal of such at this time.

- a. **C-2010-35: CREATION KINGDOM FAIRWAY, LLC** - appeals for a conditional use permit to establish a school for academic instruction, in a Single Family Residential (R-1C) zone, on property located at 350 Henry Clay Boulevard (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. A private school for academic instruction and child care center at this location should benefit the community, and not adversely affect any of the surrounding properties. An existing building, formerly used for a public elementary school, will be used, without the need for any expansion or major exterior renovations. Adequate off-street parking is already available, and an existing circle drive at the front of the building will continue to function as a drop-off and pick-up location for children and students. All of the outdoor play and recreation areas will be fenced, which should help to protect residential properties that adjoin those areas.
- b. All necessary public facilities and services are available and adequate for the proposed uses.

This recommendation of approval is made subject to the following conditions:

1. The facility, to include care and educational programs for infants through children of middle school age, shall be established in accordance with the submitted application (including the supplemental letter of April 14, 2010) and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any renovations, fence construction, or occupancy of the building.
3. The school portion of the proposed facility shall be established, at the minimum, according to the following schedule: kindergarten for the school year 2010-2011; kindergarten plus first grade for the school year 2011-2012; kindergarten plus first and second grade for the school year 2012-2013; kindergarten plus first, second and third grades for the school year 2013-2014; kindergarten

- plus first, second, third and fourth grades for the school year 2014-2015; and kindergarten plus first, second, third, fourth and fifth grades for the school year 2015-2016.
4. Enrollment in the various programs and the allocation of space shall be managed for the facility as a whole to ensure that (a) minimum off-street parking requirements are satisfied based on a total of 86 off-street parking spaces being available, and that (b) once the school is fully established, or by the 2018-2019 school year, whichever comes first, off-street parking for the child care portion of the facility (infants through kindergarten) shall not exceed 75% of the off-street parking that is required for the school portion of the facility (elementary and middle school). Records shall be maintained by the appellant, subject to review by the Division of Building Inspection, to document compliance with these requirements.
 5. A minimum of 25 square feet of outdoor play area shall be provided for every child that is enrolled in the child care, to be fenced and screened in accordance with the requirements of the Division of Building Inspection.
 6. The facility shall be established and maintained at all times in compliance with the requirements of the Kentucky Cabinet for Health and Family Services.

Representation - There was no representative present.

Discussion – Chairman Brown asked the staff if they had any information for the Board about this case. Mr. Saltee replied that until about four hours earlier, the staff had not heard anything about this request. However, earlier this morning, the staff did receive an e-mail from the property owner that this appellant no longer intended to pursue this application. The staff has since received an e-mail from the property owner rescinding their permission for the appellant to seek this conditional use permit. The staff believed that the Board could consider either an indefinite postponement or a withdrawal of this application at this time.

Chairman Brown asked if there were any objectors to this application. There was no response from the audience.

Chairman Brown asked Ms. Boland if she had any recommendation as to how the Board should proceed with this appeal. Ms. Boland replied that the Board should take action either to postpone indefinitely or withdraw this request, based upon the e-mail from the property owner rescinding their permission for this application. Chairman Brown replied that he felt that this was unfortunate, given the amount of work done by the staff on this application.

Action – A motion was made by Mr. Stout and seconded by Mr. Griggs and carried unanimously to accept the withdrawal of **C-2010-35: CREATION KINGDOM FAIRWAY, LLC** – an appeal for a conditional use permit to establish a school for academic instruction, in a Single Family Residential (R-1C) zone, on property located at 350 Henry Clay Boulevard, based upon the recent communication from the property owner.

2. No Discussion Items - The Chair asked if there were any other agenda items where no discussion was needed...that is, (a) The staff had recommended approval of the appeal and related plan(s), (b) The appellant concurred with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **V-2010-49: JOHN PAUL and JUDY MILLER** - appeal for variances to: 1) reduce the required 300' front yard to 40' for a garage addition; and 2) eliminate the required 5' landscape buffer at the Urban Service Area Boundary in a Single Family Residential (R-1B) and the Agricultural Rural (A-R) zones, on property located at 277 Swigert Avenue (Council Districts 6 & 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The garage addition will be further away from both Swigert Avenue and Old Kingston Road than the existing residence, and any landscaping along the Urban Service Area boundary would only serve to buffer one part of the subject property from another part of the same property.
- b. The split-zoning of the subject property, location of the Urban Service Area boundary, and sharp

turn where Old Kingston Road and Swigert Avenue intersect, are all unique circumstances that collectively provide sufficient justification for the requested variances.

- c. Strict application of the Zoning Ordinance would force the appellants to construct a garage addition at an undesirable location on the property that would interfere with an established back yard and septic system, and would also not align well with the floor plan of the existing dwelling.
- d. The need for the variances that have been requested is not the result of any intent to circumvent a requirement of the Zoning Ordinance, but rather reflect an effort on the part of the appellants to make a reasonable improvement under challenging circumstances.

This recommendation of approval is made subject to the following conditions:

- 1. The addition shall be constructed in accordance with the submitted application and site plan, with the footprint of the garage not to exceed 1,500 square feet.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- 3. The building line reduction to 40' is granted only for the purpose of allowing the proposed garage addition (and the proposed barn should it be determined that the barn is not an exempt agricultural building).

Representation – Mr. Rory Kahly, EA Partners, was present along with John Paul and Judy Miller. Mr. Kahly indicated that the appellants had recently received revised architectural plans, and now needed to request more than the 1,500 square feet for the garage originally shown on their submission. He said that they now needed a larger structure of more than 2,200 square feet in size. They hoped for a two-story garage, but now they need a one-story garage, in order to keep with the roof line of the existing house on the property.

Mr. Kahly said that an archway would be built over the existing driveway, to connect the house to the garage. Their architect said that a two-story garage would not be in keeping with the residence. Ms. Miller stated that Mr. Clive Pohl was their architect. It was his thought that a two-story garage would not be able to match the adjacent house's roof line. He suggested an increase in square-footage in the alternative, and that it be placed "deeper" on this lot, rather than wider.

Discussion – Chairman Brown stated that he did not "do well with surprises" but that he would ask the staff whether or not they have had sufficient time to review this proposed change. Mr. Marx asked Mr. Kahly if he had a revised site plan that was consistent with these new changes. Mr. Kahly replied that he did not, as they had just recently found out that the garage needed to be larger than shown on their site plan. Mr. Marx asked if the orientation of the proposed garage was different than shown on the current site plan. Mr. Kahly replied that it was the same orientation, but it would involve a larger footprint. He said that the 1,500 square-foot coverage for the garage would now need to be increased.

Mr. Hume asked Mr. Kahly for the size of the house. Mr. Marx replied that the proposed garage would be attached to the house. Mr. Kahly replied that the garage would be connected to the existing house, and that the existing house is 3,800 square feet in size.

Chairman Brown asked that, since the site is split-zoned, if the garage is limited to a maximum size of 1,900 square feet. Mr. Marx replied that the size restriction did not apply in the A-R zone. Mr. Kahly added that their site is about 34 acres in size, although it is split-zoned.

Chairman Brown asked Mr. Hume if he was comfortable with this revised request. Mr. Hume replied that he would like a few minutes to review this revised information.

Note: Chairman Brown proceeded to the next case as listed on the agenda. Following consideration of **C-2010-44: VICKI TURNER**, the Board returned to this appeal.

Chairman Brown asked Mr. Hume whether Building Inspection would like a continuance of this appeal. Mr. Hume replied in the negative, and stated that his office was ready to proceed after discussing this with the planning staff.

Mr. Marx stated that the staff was prepared to propose a revised condition #1 for this application, and displayed it on the overhead. It read as follows:

1. The addition shall be constructed in accordance with the submitted application and revised site plan, with the footprint of the garage not to exceed ~~1,500~~ 2,200 square feet.

Mr. Griggs asked Mr. Kahly if the area shown on the site plan as having the "1,800 SF (footprint) GARAGE" had any dimensions. He replied that it could be scaled from the site plan, noting that their plan also showed the connection to the existing dwelling.

Chairman Brown stated that he believed this item should be postponed. Mr. Marx replied that the Board could certainly do that, but the staff was comfortable in proceeding. He was prepared to display some photographs of the site, if the Board wished to see them, because the site was not extremely visible from the adjacent roadway.

Ms. Moore asked if the direction of the garage was as important as the extent of the dimensional variance being requested. Mr. Sallee used the overhead to identify the area of the subject property where the variance was requested. The area involved is where the garage and the accessory structure to the rear of it were proposed to be built—farther back than the 40' setback of the house, but less than the 300' setback required in the A-R zoned portion of the subject site.

Mr. Hume asked that Mr. Kahly provide his office with a revised site plan.

Chairman Brown asked the Millers if they were in agreement with the three conditions recommended for approval of their variance. Ms. Miller stated that they were, as their garage would be no closer to the road than the existing house. Chairman Brown asked if Mr. Hume was also in agreement. Mr. Hume replied in the affirmative.

Mr. Griggs asked if there were any dimensions associated with the location of the garage shown on the site plan. Chairman Brown commented that he viewed this as a 2,200 square-foot envelope for the garage. Mr. Griggs thought that, since it was to be attached to the house, it would not be placed too far back on the subject lot. Mr. Griggs asked if the site plan was to scale. Chairman Brown replied that the conflict with the R-1B and A-R setback lines was the source of this problem. Mr. Sallee displayed a graphic of the site plan on the overhead projector, and said that the envelope for the garage scales at about 50' by 100'. This provides a 5,000 square-foot envelope for the 2,200 square-foot garage now proposed. With this revised site plan, Mr. Griggs stated that he was in favor of moving forward with this request.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout and carried unanimously to approve **V-2010-49: JOHN PAUL and JUDY MILLER** – an appeal for variances to: 1) reduce the required 300' front yard to 40' for a garage addition; and 2) eliminate the required 5' landscape buffer at the Urban Service Area Boundary in a Single Family Residential (R-1B) and the Agricultural Rural (A-R) zones, on property located at 277 Swigert Avenue, for the reasons provided by the staff and subject to the three conditions proposed, noting the revision to condition #1 as follows:

1. The addition shall be constructed in accordance with the submitted application and revised site plan, with the footprint of the garage not to exceed 2,200 square feet.
- b. **C-2010-44: VICKI TURNER** - appeals for a conditional use permit to establish a home occupation (dental instrument sharpening) in a Planned Neighborhood Residential (R-3) zone, on property located at 908 Crocus Court (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no aspects of the actual activity that might be disruptive, with any noise generated not likely to be heard outside of the home. Parking and traffic issues are not expected, since clients will not be coming to the home to drop off or pick up dental instruments.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The home occupation shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning

- sharpening activities.
3. All dental instruments shall be sterilized appropriately, and packaged in a safe manner for shipping purposes.
 4. This conditional use shall be considered null and void should the appellant cease to own or occupy the subject property.

Representation – Ms. Vicki Turner was present for her appeal. Chairman Brown asked if she understood the recommendation for approval and would agree with the four recommended conditions. Ms. Turner replied in the affirmative.

Chairman Brown asked if there was a need to prohibit any pick-ups or drop-offs of instruments at this location. Mr. Marx replied that it would be clearer if this change was made to the conditions. He felt that condition #1 already covered this activity, but that it would not be a problem to add this restriction.

Ms. Moore asked whether it would be appropriate to address any other safety issue. Ms. Turner displayed a plastic bag to the Board, and stated that the instruments come to her in such a bag, and then are “in a box, which is in another box” as well.

Mr. Griggs asked if all deliveries to her would be by commercial carrier. Ms. Turner replied in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout and carried unanimously to approve **C-2010-44: VICKI TURNER** – an appeal for a conditional use permit to establish a home occupation (dental instrument sharpening) in a Planned Neighborhood Residential (R-3) zone, on property located at 908 Crocus Court, for the reasons provided by the staff and subject to the four recommended conditions.

- c. **C-2010-45: RONALD LEE CUNDIFF, DVM** - appeals for a conditional use permit to establish a small animal hospital in a Planned Shopping Center (B-6P) zone, on property located at 4770 Hartland Parkway, Suite 170 (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. A small animal hospital at this location should not adversely affect the subject or surrounding properties. All activities will be confined to the interior of the building, and all exterior walls will be soundproofed. Adequate parking is conveniently available in the shopping center parking lot, close to the suite to be occupied.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The small animal hospital shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the hospital.
3. All exterior walls of the subject suite shall be completely soundproofed.
4. All cages, pens and kennels shall be located inside of the building, and used only for the purpose of assisting in treatment of medical conditions, not for boarding.

Representation – Dr. Ronald Lee Cundiff was present for his application. Chairman Brown asked if he understood the recommendation for approval and would agree with the four recommended conditions. Dr. Cundiff replied in the affirmative.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout and carried unanimously to approve **C-2010-45: RONALD LEE CUNDIFF, DVM** – an appeal for a conditional use permit to establish a small animal hospital in a Planned Shopping Center (B-6P) zone, on property located at 4770 Hartland Parkway, Suite 170, for the reasons provided by the staff and subject to the four conditions recommended by the staff.

- d. **C-2010-46: FIRST BAPTIST CHURCH OF MADDOXTOWN** - appeals for a conditional use permit to construct a new church in a Single Family Residential (R-1D) zone, on properties located at 3549

and 3573 Huffman Mill Pike (Council District 12).

The Staff Recommended: Postponement, for the following reasons:

- a. There are significant design issues related to access to Maddox Lane and lack of connectivity between the two parking areas that need to be addressed.
- b. An alternative design should be considered that: (1) better integrates the "phase two" parking lot with the proposed circular drive at the front of the church, and (2) provides handicap parking spaces closer to the church entrance.
- c. The phasing of the parking lot construction and relationship of that to the provision of a storm water management system, as well as any possible future expansion of the building, needs to be carefully considered, so that unnecessary paving and loss of open space is minimized.

Representation - There was no representative present.

Discussion - Chairman Brown asked the staff if they had any information from the appellant for this case. Mr. Marx replied that a revised site plan had been submitted by the church two days earlier, but that the staff had not had time to review this information. He had spoken with the church's representatives, and suggested that a postponement would be in order to allow time for a full review of this plan by the staff and for a revised staff recommendation to be drafted. He did not hear back from the church, and was not sure that they were in opposition to a postponement of this request.

Action - A motion was made by Mr. Stout, seconded by Mr. Stumbo and carried unanimously to postpone **C-2010-46: FIRST BAPTIST CHURCH OF MADDOXTOWN** - an appeal for a conditional use permit to construct a new church in a Single Family Residential (R-1D) zone, on properties located at 3549 and 3573 Huffman Mill Pike, to the Board's June meeting.

- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none remaining.

D. **Conditional Use Appeals**

1. **C-2010-47: KAREN SCHINDLER** - appeals for a conditional use permit to establish a pre-school at an existing church in a Single Family Residential (R-1A) zone, on property located at 1891 Parkers Mill Road (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. All facilities are in place, including the required outdoor play area, to

accommodate a preschool for up to 32 children. Adequate parking is available in the church parking lot, and traffic management measures (e.g., signage) will be undertaken to limit the potential for traffic safety problems to arise as a result of the proposed use.

- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The preschool shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the preschool.
3. Enrollment at the preschool shall be limited to no more than 32 children, or as further limited based on occupancy restrictions set by the Kentucky Cabinet for Health and Family Services and/or the Division of Fire and Emergency Services.
4. The outdoor play area of 1,312 square feet shall be fenced and screened in accordance with the requirements of the Division of Building Inspection.
5. Signage and pavement markings shall be installed, subject to review and approval by the Division of Traffic Engineering, to ensure that the front circle drive is used for one-way traffic (north to south) and that the northeasterly access point is not used as an exit.
6. The appellant shall direct patrons and employees of the preschool to not park in any of the five parallel parking spaces along the southerly driveway.

Representation – Ms. Karen Schindler, appellant, was present. Chairman Brown suggested that the Board hear first from any objectors, and then he would afford Ms. Schindler an opportunity to address her application.

Objectors – Mr. Steven Webb, 1879 Parkers Mill Road, was present to object. He stated that he is an adjacent resident to the St. Raphael's Episcopal Church, where this use is proposed. He stated that he and his neighbors had submitted eleven letters of objection to this conditional use request, including some from his neighbors that were not able to be present today. In summary, their concern is the increased traffic flow that will result on Parkers Mill Road from this use. Currently, Dunbar High School and the Lexington School are located nearby, and both generate a great deal of traffic on Parkers Mill. There is an existing traffic issue in the area, as these schools cause traffic to back up on Parkers Mill at various times of day.

Mr. Webb said that, while this is a lovely church, and they are a good neighbor, the church's neighbors are worried that this will morph into a more commercial operation. There was formerly a small pre-school at this location. The hours proposed for this pre-school are 6:30 am to 6:30 pm, which will cause traffic to come to this site during the already busy peak travel times. He felt that car doors slamming at these early and late hours will cause a disturbance to the neighborhood. He was also concerned with the children's safety given the plank fences along the road and the creek to the rear of the property. In short, they believe that while the pre-school is a "great idea," this is simply the wrong location for it.

Chairman Brown asked if Mr. Webb was a parent. Mr. Webb replied in the negative.

Ms. Jan Ellinger was present with her husband, Dr. Chuck Ellinger, to object to this request. They have resided across the street from this church since 1965. They have seen many changes in the area over the years, but the traffic increase has been tremendous. They were forced to install a "circle drive" just to be able to get in and out of their property on to Parkers Mill. She stated that besides providing a main thoroughfare to Dunbar High School and the Airport, this roadway is very narrow. This use will cause a safety issue with the additional 30-40 trips to the church each day on this narrow road. She said that the neighbors do not object to kids in the neighborhood, as she had three of her own and also has grandchildren now as well. They just believe that there is a better place for this facility.

Ms. Traci Laycow, a resident of Standish Way behind the church, was also present to object to this appeal. She said that their neighborhood is very quiet, although the church is active on Sundays. She bought her home because of its quiet location. However, her sister in Florida was a neighbor to a church that opened a day-care, and regretted the increase in noise and activity. She said that her sister's home value in Florida plummeted as a result. Ms. Laycow said that she is trying to sell her home now, and is worried about a similar outcome for her property. She stated that she is not opposed to children, as she has two of her own, but she is concerned about the noise impact when she sits outdoors in her backyard.

Mr. Stout asked if she was aware that neighborhoods aren't immune to these types of uses anymore. Ms. Laycow stated that she did understand that, but she selected this home because it was quiet, because there was a beautiful church behind her property, and because there is a paddock nearby. She did not believe that this request was fair to the neighbors that, like her, enjoyed the quiet in this area. She said that her home was her biggest financial investment, and she was worried that her home value would plummet if the peace and quiet that she has enjoyed is impaired by this use. She thought that the day care was a great idea, but not in her backyard.

Mr. Michael J. Harrison, a resident of 1293 Standish Way, was present to object to this appeal. He wanted the Board to understand that he was not opposed to this church in any way. The church was there when they bought their lot and built their house. The neighbors understand that the church is, basically, a good neighbor. He said that the church is active from 11:00 Sunday throughout the rest of the day, and on one evening per week. However, this use is proposed 100 yards from his home, across the creek. The church's parking lot is above the elevation of the neighbors' homes. They believed that this would introduce a commercial operation into their R-1A zoned neighborhood. The employees will arrive at 6:30 am each day, and headlights will shine into their bedrooms early each morning.

Mr. Harrison stated that the church did operate a child care facility a few years ago. Back then, the neighbors experienced loud conversations in the parking lots, car doors slamming, cars starting and cranking to start, and children yelling and screaming. His noted that his son's day care was located in a commercial area, and not in a quiet neighborhood.

In closing, Mr. Harrison submitted a letter of objection from Mr. Paul Brett Johnson, who resides at 1200 Standish Way, and asked that the Board consider his views on the matter as well.

Questions – Mr. Griggs asked about the day care facility that several of the objectors had mentioned at this location. Mr. Marx replied that he could find no record of that facility being approved by the Board in the past. He stated that two cases were mentioned in the Staff Report, one that was disapproved by the Board and another that was subsequently withdrawn.

Chairman Brown asked Ms. Schindler about her relationship with the church. She replied that the only relationship was that of a landlord, to whom they would pay rent. She stated that she had done this type of thing with other local churches that thought a child care facility would be a good activity.

Appellant's Presentation – Ms. Schindler stated that they would never care for more than 32 children at one time at the facility, and never more than 16 would be outside at one time. She stated that there would be four faculty and a director on site. Traffic would be restricted to one drop-off time, prior to 8:00 am when classes are to start. She did not know how to restrict the headlights on the parents' vehicles, but the facility would close by 6:00 pm.

Ms. Schindler understood that the church is located in a quiet neighborhood. Their traffic would not be a huge increase to that already using Parkers Mill Road. She understood that Mr. Webb did speak with the rector of the church about screening the proposed playground, and they would agree to do so. She had hoped that this location would work for their operation, but she was truly surprised with the level of opposition from the Colony neighborhood.

Discussion – Chairman Brown asked if she would be the director of this child care facility. She replied that she would not, but that she would be the owner, and that she would be there about ½ the time. Chairman Brown asked if she had reviewed the six conditions recommended by the staff, if this use would be approved. She paused to review the conditions at this time.

Mr. Hume stated that the Division of Building Inspection had not received any complaints about the previous child care use at this church. He reported that no one had ever said anything to their office about such a use.

Mr. Stout asked if she received the staff's recommendation and the agenda information in the mail. She said that the level of opposition today was clearly a surprise to her. Chairman Brown asked if the rector had reviewed these recommended conditions. She stated that this was the first time she had seen them, and that she did not believe that the rector had seen them either. Chairman Brown thought that

she would need to agree to some of these, and the church would need to agree with the others. She asked how she should have received these in advance. Mr. Marx replied that they were mailed to her one week ago. Mr. Sallee added that they were sent by first class mail to the address listed on the submitted application.

Chairman Brown stated that it appeared that she had not reviewed these conditions with the rector. Ms. Schindler agreed with the Chair.

Ms. Moore did not feel comfortable approving Ms. Schindler's request at this time, since she had not reviewed these conditions with the rector of the church.

Mr. Griggs stated that he was leaning toward a disapproval of this request, although he often supports conditional use permits for family child care facilities in residential neighborhoods for up to twelve children—thus distributing these smaller facilities throughout the city. However, this neighborhood has come out "in force" to oppose this request, and he is disturbed at the history of this church operating such a facility in the past without a conditional use permit in the 1970s and the 1980s.

Mr. Stumbo noted that in 1977 a similar request was disapproved by the Board and in 1982, another similar request was withdrawn. He noted that traffic patterns in this area had not improved since that time. He noted the opposition today from the neighbors due to traffic, safety and noise concerns, and he did not believe that he could support this request at this time. He was disappointed that the church did not warn her that neighbors have objected to this type of use in the past, and did not feel that this was an appropriate location for the proposed use.

Action – A motion was made by Mr. Stumbo, and seconded by Ms. White to disapprove **C-2010-47: KAREN SCHINDLER** – an appeal for a conditional use permit to establish a pre-school at an existing church in a Single Family Residential (R-1A) zone, on property located at 1891 Parkers Mill Road, for these reasons:

1. Parkers Mill Road is a narrow road that has already been impacted by significant increases in traffic by virtue of other surrounding growth and school usage. The additional impact caused by the proposed pre-school of up to 32 children would be detrimental upon the surrounding properties.
2. The character of this neighborhood is quiet and somewhat rural in nature. That character is already impacted intermittently by the church activities which the neighbors have accepted; but adding the daily noise and traffic with the pre-school is not appropriate for this location.

The votes were as follows:

Ayes: Brown, Griggs, Meyer, Stout, Stumbo, White

Nays: Moore

The motion for disapproval carried, 6-1.

2. **C-2010-48: HDM REAL ESTATE, LLC** - appeals for a conditional use permit to construct a temporary gravel access road in the Agricultural Rural (A-R) zone, on property located at 4250 Iron Works Pike (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. A temporary access road to be used only for emergency purposes during the World Equestrian Games should not adversely affect the subject or surrounding properties. The road will be similar in appearance to a typical farm road, and the use will be discontinued at the conclusion of the Games in October 2010. Significant environmental impacts are not anticipated, as almost all of the road will be located in open fields with no sensitive natural resources.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The gravel road shall be constructed in accordance with the submitted application and site plan, with the understanding that two pull-off areas will also be provided.

2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. The farm gate at the end of where Adios Drive currently terminates shall remain closed and locked, except for the time period between one week prior to September 25, 2010 and one week after October 10, 2010.
5. The crossing of any utilities and/or utility easements shall be done in accordance with the requirements of the respective utility companies, with evidence of such provided to the Division of Building Inspection prior to the issuance of any grading or construction permits.
6. Removal and/or alteration of trees within the existing tree line just north of the overhead utility lines, about 250' south of the appellant's southerly parking lot, shall be limited to only that required for construction of the 12' wide gravel road.

Representation – Ms. Rena Wiseman, attorney, was present to represent HDM Real Estate. Dr. Andy Clark, CEO with Hagyard, Davidson & McGee Associates, was also present.

Appellant's Presentation – Ms. Wiseman stated that they were here with this application because of the World Equestrian Games coming to Lexington. Hagyard's only access to their equine medical facility is from Old Iron Works Pike. During the WEG's two week-day stay, Ms. Wiseman said that it is likely that there will be times where it will not be possible for their doctors and staff to get to the hospital in emergencies. Thus, their request is for an alternative access to be provided to the rear of their equine hospital with a gravel roadway. It is to be accessed by an entrance that will be used only during the World Equestrian Games. There are two public streets stubbed into the hospital property, which was purchased three years ago, and this temporary entrance is at one of those street stubs.

Ms. Wiseman stated that Dr. Clark had met with the Board of the Spindletop Neighborhood Association about this proposal, as he did before the Hagyard, Davidson & McGee Equine Hospital purchased this property. She submitted a copy of the minutes from this meeting with the Neighborhood Association into the record, which shows that they voted to support this application. She distributed copies to the Board for their review.

Ms. Wiseman stated that this gravel access drive will have a gate at the edge of the subdivision, which will be locked; that it will be used for agricultural purposes; and that it will only be utilized during the World Equestrian Games. This 40-acre tract of land is leased to a farmer, who produces soybeans on the property. That is the only other use intended and/or planned for this gravel driveway and gate. Should the hospital ever wish to use these for anything related to the equine hospital, then they will be back in front of the Board to seek the necessary conditional use permit.

Ms. Wiseman stated that the equine hospital is in agreement with the recommendations put forth by the staff, as well as with the six conditions recommended. There was an additional condition regarding drainage that was presented to Dr. Clark by the Neighborhood Association at a meeting he attended two evenings earlier. They have recently agreed that, once the WEG is over, to the extent that any drainage pipe or improvements are made near Adios Drive near the gate, they are to be removed so as to make it unattractive for someone to want to use that entrance to the HDM property. Ms. Wiseman said that the equine hospital doesn't have a problem with that restriction.

Ms. Wiseman concluded by stating that the reason that they are here is that their horses are very expensive creatures, and they want to ensure that their doctors and staff can get to the hospital in the event of an emergency during the WEG.

Questions – Mr. Griggs stated that the farm in question is zoned Agricultural, and that the farming operation could proceed without any permission. He asked if the proposed gravel road was stubbed into a city street. Ms. Wiseman responded affirmatively and said that, at one time, the stub street was proposed to continue into the farm to allow additional residential subdivision of lots.

Mr. Griggs said that there might be agricultural uses that the neighborhood might find objectionable. He thought that the use of this access point for farming activities would be a legal use as well as for any of those more objectionable uses. He asked if this use could be restricted to prohibit those objectionable farming activities near the neighborhood. Ms. Wiseman said she wasn't sure what those objectionable

uses would be. Mr. Griggs asked if the entire Neighborhood Association was in agreement with this request. Ms. Wiseman replied in the affirmative.

Objections – Charles Denham, 1695 Adios Drive, was present to object. He stated that he also owns a vacant lot at 1691 Adios Drive. He bought his home years ago from Mr. Sebastian, and thought that he would always live on a quiet dead end street.

Mr. Denham stated that he is the President of the Neighborhood's Board and that their Board did approve, in essence, the proposed gravel road. He did object to the validity of the minutes presented by Ms. Wiseman, as they have not been read or voted on by his Board. He said that their Board has never voted to object to anything that the equine hospital has requested. He said that it has been great to watch this facility grow from a small vet clinic into a world-renowned equine institute.

Mr. Denham stated that he had spoken with Dr. Clark about restricting this road from some uses that the neighborhood would find objectionable. He said that in reading the A-R zoning restrictions, he was concerned about some of the allowable uses in that zone. He then proposed that, in exchange for allowing them to leave the road in place, they exclude any traffic generating or noxious use of this road, such as for retail sales; greenhouses; agri-tourism; animal feed lots or for composting. In addition, he said that he asked Dr. Clark to limit the vehicular uses to no more than 2,600 pounds or less (loaded gross weight). Mr. Denham said that Dr. Clark told him they would not agree to that limit because "they might want to bring a bulldozer in there." Mr. Denham stated that a bulldozer is not needed to farm land, and he felt that Dr. Clark backtracked somewhat from what he had told their Board earlier. He then sent a second agreement to Dr. Clark which was also not signed. Finally, just before today's meeting, Dr. Clark did agree to sign the restriction on removing the drainage pipe, mentioned earlier.

Mr. Denham stated that his neighborhood association had met several times with HMB Consulting, which the state Department of Highways hired to manage traffic for the WEG. The estimates for some 600,000 attending the Games have been reduced, primarily because of the drop in valuation for the Euro currency. A representative from HMB was present at their recent neighborhood meeting, along with representatives from Game Day, another consultant. They told their association that they were never going to close the shoulder of Iron Works Pike, regardless of the situation there. The Police Department would also be present with motorcycle patrols. He felt that the shoulder would always be available for use by the hospital.

This led Mr. Denham to openly wonder why the hospital would invest \$20,000 to install this road if they were only planning to use it one time (for the Games), especially if they really never have to use it. He concluded that this road would just open the door for some future development. As an individual, he said he couldn't help but wonder what the future use of this road would be. If it were restricted, he could see it not as a threat. He asked that the Board condition it so that it truly is used just one time. He concluded by saying that he was opposed to this application.

Discussion – Mr. Stout stated that he has lived in the area for 35 years. He said that the equine hospital has been a good neighbor. He did not want to see a horse die on Dan Patch Drive or Adios Drive because they couldn't get to this hospital, but he wanted to hear from either Ms. Wiseman or Dr. Clark as to why they did not believe that Iron Works Road would remain available for their use during the World Equestrian Games. He also wondered why the equine hospital was interested in using Berea Road for their access, which he felt would be a problem, since it connects to both Iron Works and Georgetown Road. He thought that Mr. Denham's proposal was a good one, and wanted to hear why the hospital objected to it. Ms. Wiseman replied that the hospital is a business that is to stay open during the Games. No one can tell them that the traffic will always be such that a truck or horse trailer can navigate Iron Works Pike to get to the hospital at any time during the WEG. They are concerned about the chance that one horse, perhaps worth millions of dollars, would not be able to make it through the traffic in time. The \$20,000 investment will enable them to stay in business. It is an "insurance policy" for them to take care of their horses.

Mr. Stout stated that he is more concerned that the hospital's interest is more about that horse, over the nearby neighborhood, especially since the neighborhood has been there for 35 years. Ms. Wiseman said that she did not say that the hospital is not concerned about the neighborhood, but they did not think that a horse trailer or an equine ambulance would pose a danger to the neighborhood. Mr. Stout stated that this traffic would be going down the main roads of the neighborhood. Ms. Wiseman replied

that their request was reasonable, and it would account for all contingencies.

Mr. Griggs asked why the appellant would not agree to limit this roadway as the objector requested. Ms. Wiseman replied that almost all of the proposed use restrictions were ones that would have to come back to the Board to be approved. It seemed to her and to Dr. Clark that the most likely use of this land was for a possible future expansion of the equine hospital. Mr. Griggs asked if everything on the proposed list was a conditional use. Ms. Wiseman thought that was the case.

Ms. White stated that, in her reading, this application was for a "temporary" road. Ms. Wiseman replied in the affirmative. Chairman Brown stated that this road was to remain in place following the conclusion of the Games. Ms. White noted her impression that this road would only be used for two weeks' time, should it be approved by the Board.

Chairman Brown asked about condition #4. He asked if additional language could be added that, upon the conclusion of the Games, the road could only be used for agricultural purposes. Ms. Wiseman replied that they would agree with that added condition.

Ms. Moore asked if the hospital was planning to use this road after the WEG. Ms. Wiseman stated that it would no longer be used by anyone to get to the medical clinic. Its use would be limited to the farmer leasing the property to plant and harvest his soybeans. Chairman Brown asked if there was a gate in place there now, and not a road. Ms. Wiseman replied affirmatively. She also said that farm equipment and tractors may be needed to assist this farming operation.

Mr. Denham stated that the maximum number of patrons estimated for the Games is 32,000-33,000 per day. There have been that many people at the Horse Park before – most recently a few years ago for the Rolex event. He and the traffic consultants do not believe that traffic will be a problem at the hospital's existing entrance. One of the keys to this assertion is that all parking will be pre-paid, and there will be no need to stop traffic entering and exiting the parking lots.

Mr. Sallee stated that the staff had prepared an option to condition #4, as mentioned earlier by the Chair. Chairman Brown stated that he was not dictating this condition, but that it would be up to a vote by the Board, to which Mr. Sallee agreed.

Mr. Stout asked if this would also restrict equine ambulances. Chairman Brown replied that it would not, in his opinion. Ms. Wiseman replied that the restriction could be crafted to prohibit uses other than the principal permitted uses in the agricultural zone.

Ms. Moore stated that if this was a farm, they could construct this gravel roadway. Ms. Wiseman agreed. Ms. Moore stated that this roadway was before the Board because the equine hospital is a permitted conditional use. Ms. Wiseman again replied in the affirmative. Ms. Moore stated that the proposed restriction would be consistent with what would be allowed there anyway, with the added use for two weeks by the hospital during the Games. Ms. Wiseman again agreed with Ms. Moore.

Mr. Stout commented that this hospital has been an outstanding neighbor and that the Neighborhood Association does appreciate what they do there. His concern is that the emphasis is being placed more on the horse than the residents of this area. He said that kids play in these streets, and for the hospital to not take this into account is most disturbing to him.

Mr. Sallee read the proposed addition to condition #4, as follows:

"After conclusion of the Games, this road shall only be used for principal permitted agricultural purposes in the A-R zone."

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer to approve **C-2010-48: HDM REAL ESTATE, LLC** – an appeal for a conditional use permit to construct a temporary gravel access road in the Agricultural Rural (A-R) zone, on property located at 4250 Iron Works Pike, for the reasons provided by the staff, including the six conditions recommended by the staff, including the revision to condition #4 offered at this meeting.

The votes were as follows:

Ayes: Brown, Griggs, Meyer, Moore, Stumbo, White

Nays: Stout

The motion for approval passed, 6-1.

E. **Administrative Review**

There were none remaining.

IV. **BOARD ITEMS** - The Chair announced that any item a Board member wished to present would be heard at this time.

Mr. Hume requested that the Board consider a revocation hearing for property at 179 Saunier Street for C-2009-9: Broadway Christian Church. He said that permits were initially issued for the installation of a parking lot at that location, but that those permits have since lapsed. Not all of the conditions set forth by the Board have been met, so he was recommending a revocation hearing as a result.

Mr. Marx stated that Ms. Boland may need to comment, as this entire request was driven by the action of the church to remove a landscape area, and failure of the church to obtain permission for that work. Only two new parking spaces were authorized by that conditional use permit. Ms. Boland stated that she would need to review the record of that case to advise the Board whether or not to proceed with the revocation. Mr. Marx stated that the church has still not installed the required landscaping. Mr. Hume responded that, without the revocation hearing that his office would need to go through District Court, and possibly obtain an injunction. He viewed the revocation hearing process as a means to employ "arm twisting" in order to get the landscaping installed. Mr. Marx did not feel that the revocation of the two spaces would still compel the church to install the landscaping required for the entire parking lot. Ms. Boland thought that the Board would have great ability to ask Building Inspection to take action, if necessary. Mr. Hume thought that a revocation would bolster any other criminal charge that would result.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs and carried unanimously to schedule a revocation hearing for **C-2009-9: BROADWAY CHRISTIAN CHURCH**.

V. **STAFF ITEMS** - The Chair announced that any item a Staff member wishes to present would be heard at this time.

- A. House Bill 55 Training Opportunity – Mr. Sallee advised the Board that there would be an APA audio conference on Wednesday, May 26, 2010 from 4:00 until 5:30 in the Division of Planning Conference Room on the 7th floor of the Phoenix Building. The title of this training session is "Design Review for Officials," and would count toward 1.5 hours of training credit.

VI. **NEXT MEETING DATE** – Chairman Brown announced that the Board's next meeting date would be June 25, 2010.

VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 2:34 p.m.

Peter Brown, Chairman

James Griggs, Secretary